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ROBERT H. SHEARWELL, CLERK
WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

THE ESTATE OF JAMES BERSHELL

3:07CV1210

VERSUS

JUDGE:

RAILSERVE,
UNION PACIFIC RAILROAD,
ARCH SPECIALTY INSURANCE

MAGISTRATE JUDGE:

PETITION FOR DAMAGES FOR WRONGFUL DEATH

Petitioner, Eddie Spencer, daughter and legal heir of decedent, James Bershell,
appearing through undersigned counsel, who respectfully represents the following:

1.

Made defendants herein are:

- a. RailServe, through its agent for service of process, Prentis Hall Corporation System, Inc., 320 Samomerulos St. Baton Rouge, LA 70802 and its attorney David Barfield, 233 East Capitol Street, Jackson, Mississippi, 39207-3979
- b. Union Pacific Railroad, through its agent for service of process, C T Corporation System, 8550 United Plaza Blvd, Baton Rouge, LA 70809, and
- c. Arch Specialty Insurance, through its agent for service of process, CT Corporation System, 8550 United Plaza Blvd., Baton Rouge, La. 70809

2.

At all times the railroad was owned by Union Pacific Railroad and was being operated by RailServe, Inc. The railroad company violated federal regulations statutes by failing to follow designated procedures for operation a train safely at railroad crossings and the amount in controversy here will exceed Seventy-five thousand Dollars.

3.

On or about July 23, 2006, at decedent, James Bershell, was traveling Northbound on North Washington Street and was struck by the train in question, which was being operated by Railserve. The train was traveling east bound and the conductor was walking

across behind the train, just prior to the accident. Mr. Bershell died on the scene, the cause of death was severe chest injuries and lacerations of the arteries in the heart.

4.

Subject accident was solely the result of the negligence of the conductors, engineers, and the malfunctioning lights. The lights on this track have always given off false positives and this is was the cause in fact of the accident in question. This area has served as a staging or loading area for rail cars and has always had some empty cars near the track area. These empty cars were present during the time of the accident and all of these are factors showing the railserve, its agents, and the track owners, union pacific were negligent and their negligence led to the death of James Bershell. The parties were negligent in that they:

1. Failed to maintain a proper forward lookout;
2. Failed to see what they should have seen;
3. Failing to maintain a clear and proper railway.
4. Failed to remove unused or abandoned railcars from the track.
5. Failed to maintain proper warning lights and utilized hand signals that could have been easily misinterpreted.
6. In other respects to be demonstrated at the trial of this case.

Said negligence was the sole, proximate cause of subject accident.

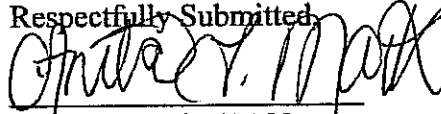
5.

As a result of the subject accident, James Bershell, received injuries that resulted in his death. Plaintiff is entitled to judgment against defendants individually, jointly, and/or in solido in a sum reasonable in the premises for wrongful death, encompassing pain and suffering, mental anguish, and future earnings.

6.

Wherefore, plaintiff prays that there be judgment in favor of plaintiff and against defendants, individually, jointly, and/or in solido in a sum reasonable in the premises for past and future pain, suffering, mental anguish, and wrongful death.

Respectfully Submitted,



Anita T. Mack, 27889

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Please Serve:

RailServe, through its attorney
David A. Barfield
233 East Capitol Street
Jackson, Mississippi, 39207-3979 and

Through its agent for service of process

Prenntice Hall Corporation System, Inc.
320 Samomerulos St.,
Baton Rouge, LA 70802

Union Pacific Railroad, and Arch Specialty Insurance through its agent
Through its agent for service CT Corporation System
8550 United Plaza Blvd.,
Baton Rouge, LA 70809

State of Louisiana


Parish of Morehouse

VERIFICATION

Personally came and appeared EDDIE J. SPENCER, who do duly swear and acknowledge and declare that: the information in the attached petition are true to the best of his information knowledge and belief.


Eddie Spencer

Sworn to and subscribed before me this 23 day of July, 2007.


Notary-Public
#27889
Anita Meck